
(2004) 10 BOM CK 0120

In the Bombay High Court

Case No : L.P.A. No. 156 of 2004 in Writ Petition No. 3988 of 2003

Maharashtra General Kamgar Union and Others

APPELLANT

Vs

Fix Transmission Ltd.

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(3A), 10A, 12(3), 18, 18(1)

Citation : (2005) 105 FLR 842 : (2005) 2 LLJ 938 : (2005) 2 MhLj 173

Hon'ble Judges : V.C. Daga, J; S.U. Kamdar, J

Bench : Division Bench

Advocate : M.V. Mohokar, for the Appellant; V.R. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

S.U. Kamdar, J.—The present petition is directed against the judgment and order of the learned single Judge dated 20-10-2003. By the said order, the learned single Judge has dismissed the petition preferred by the appellant. Some of the material facts of the present case are briefly stated as under :

2. The respondent No. 1 is carrying on business of manufacture of rubber belts. The appellant is a Union representing the workmen working in the said respondent-establishment. The appellant is a registered union. There are two other Unions in the said establishment of which one Nagpur Kamgar Union is a recognised union in accordance with the provisions of the Trade Unions Act.

3. On or about 29th November, 1993 a settlement was arrived at by the respondent-Company with recognised union - Nagpur Kamgar Union (hereinafter referred as "NGU"). The appellant was not invited for negotiations and settlement which was arrived at by and between the respondent No. 1 and the said "NGU". Accordingly, appellant filed a complaint being Complaint (ULP) No. 74/1994, alleging discriminatory treatment to the members of the appellant-Union. On expiry of settlement dated 29th November, 1993, a fresh charter of demand was submitted to the respondent-Company. However, since the

appellant-Union was not invited for negotiations in the charter of demand, the respondent filed a complaint being Complaint (ULP) No. 1104/1996 in the Industrial Court inter alia for interim relief that they should be invited by the respondent-Company for participating in the said settlement process in respect of charter of demand submitted by them. The negotiations were not fructified and, therefore, settlement was not arrived at. Thus the matter was proceeded with for conciliation before the Conciliation Officer. Even before the Conciliation Officer, the matter was not settled and he filed failure report and the matter was thereafter referred to the Industrial Court.

4. In this complaint, the appellant-Union contended that benefit of both the settlements of 1993 and 1998 should be extended to the members of the appellant-union also. The basic contention is that even when settlements are challenged by the appellant-union still they are entitled to benefit thereof. It is further contended by the appellant-union that insofar as the obligation of the members of the appellant-union is concerned to give higher figure of production, they have complied with the same right from 1993 and thus, they are entitled to benefits of settlement, particularly, higher wages and higher pay-scales prescribed thereunder. It is further contended that even though they are not accepting the said settlement yet, they are entitled to benefit which is acquired by the other respondents.

5. On the other hand, learned Counsel for the respondents contended that the appellant-union has refused to accept the said settlement and, therefore, not entitled to the benefits thereunder. It is further contended that the settlement which was arrived at u/s 18(1) of the Industrial Disputes Act, 1947 is binding only between the parties to the settlement and not to third parties who are not parties to the said settlement. It is also further contended by learned Counsel for the respondents that the settlement is not in the course of conciliation proceeding and, therefore, provisions of Section 18(3) of the Industrial Disputes Act, 1947 are not applicable. It is, therefore, contended by the respondents to the written statement that members of the appellant-union have not complied with the obligations as contemplated by settlements of 1993 and 1998 of giving increased productions, it is further contended that the appellant-Union had not accepted the said settlements by filing necessary undertaking and thus, they are not entitled to extended benefit thereof and those who refused to accept settlement cannot claim benefit of the said settlements.

6. On the aforesaid pleadings, the industrial Court framed following preliminary issues for determination :

Preliminary issues Findings 1. Whether the complainant-employees are entitled No to the benefits of the settlements dated 29-11-1993 and 4-5-1998 entered into under Section 2(p) read with Section 18(1) of the I. D. Act when admittedly the complainants are not party to the settlements? 2. What Order As per the final order.

7. The matter was thereafter heard by the Industrial Court and by order and judgment dated 24-7-2003, the Industrial Court dismissed the complaint on the preliminary issue itself and held that the appellants are not entitled to the benefits of settlement dated 29-11-1993 and 4-5-1998 which are entered into u/s 2(p) and 18(1) of the Industrial Disputes Act, 1947 and accordingly said complaint has been dismissed.

8. The said order of dismissal of the complaint was a subject matter of challenge before the learned Single Judge by way of writ petition. The learned Single Judge by order dated 29th January, 1993 considered various aspects and ultimately came to the conclusion that there is no merit in the writ petition and, therefore, same has been dismissed.

9. This order of the learned Single Judge is the subject matter of challenge in the present appeal before us. The Learned Counsel for the appellant has more or less repeated same contentions. He has inter alia contended that principle "equal work equal pay" is applicable to the members of the petitioner-union and they are thus entitled to the same pay scale as other workers of the respondent-company are entitled to. Thus he contended that there cannot be any discrimination in between the two sets of workers of the same establishment. Therefore, it was contended that even if settlement dated 29th January, 1993 is not accepted by the appellant, still the respondent-Company is bound and liable to give benefits of the said settlements to the members of the appellant-union. It is contended that the workers of the appellant-Union in fact are entitled to benefits under settlement because the respondent-Company has taken enhanced production in accordance with the provisions of the said settlement, but has refused to grant enhanced wages as provided in the said settlements. It is therefore contended by the appellants that the members of the appellant-Union are entitled to the benefits of the said settlement notwithstanding that the very same settlement is challenged by the appellants by filing complaint in the Industrial Court under MRTP and PULP Act, 1971.

10. Learned Counsel for the respondents has on the other hand urged that unless appellant-Union accepts settlements in toto, they are not entitled to any benefits which are acquired under the said settlement. He further urged that it is not settlement u/s 18(3) of the I.D. Act and hence, appellants are not entitled to benefits of the said settlement as a matter of course. It is further contended that the appellants are not entitled to claim the benefits of the said settlement without complying with corresponding obligations thereunder. It is, therefore, contended that the submission of the learned Counsel for the appellant has no merit and the same is required to be rejected.

11. Before dealing with the rival arguments of the parties, it is necessary to set out provisions of Section 18 of the Industrial Disputes Act. The said provision of Section 18 reads as under :

18. Persons to whom settlement and awards are binding.-- (1) A settlement

arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement.

(2) Subject to the provisions of Sub-section (3), an arbitration award which has become enforceable shall be binding on the parties to the agreement who referred the dispute to arbitration.

(3) A settlement arrived at in the course of conciliation proceedings under this Act or an arbitration award in a case where notification has been issued under Sub-section (3-A) of Section 10-A of an award of Labour Court, Tribunal or National Tribunal which has become enforceable shall be binding on --

(a) all parties to the industrial dispute.

(b) all other parties summoned to appear in the proceedings as parties to the dispute, unless the Board, Arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, records the opinion that they were so summoned without proper cause.

(c) where a party referred to in Clause (a) or Clause (b) is an employer, his heirs, successors and assignees in respect of the establishment to which the dispute relates.

(d) where a party referred to in Clause (a) or Clause (b) is composed of workmen all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part."

12. The present appeal raises a question of true and correct interpretation of Section 18(1) and Section 18(3) of the Industrial Disputes Act. There are already number of judgments interpreting the aforesaid sections few of which are set out hereunder.

13. u/s 18 of the Industrial Disputes Act it is clear that if a settlement is arrived at under Sub-section (1) by an agreement between an employer and workman otherwise than in the course of conciliation proceedings then the same shall be binding on the parties to the agreement, whereas, settlement arrived at during the course of conciliation proceeding under Sub-section (3) of the said Section 18, then the same shall be binding on all the parties i.e. All the workmen whether they are party to the said settlement or not. In spite of the aforesaid clear-cut provisions in law, the learned Counsel for the appellant vehemently contended that they are entitled to the benefits under settlements which are entered into u/s 18(1) of the I.D. Act. It is his case that under the principle "equal pay for equal work" all benefits must be extended to the members of the appellant-Union herein. In support of this argument, firstly, he relied upon judgment of the Apex Court in the case of *Herbertsons Ltd. v. The Workmen of Herbertsons Ltd.* 1977 Lab.I.C. 162 and strongly contended that settlement is

binding on all the parties. In particular he relied on para 15 which reads as under :

On the other hand, we take the view that after hearing the parties this Court was satisfied when it had called for a finding of the Tribunal that if the settlement was fair and just it would allow the parties to be governed by the settlement substituting the award. The wording of the issue sent to the Tribunal for a finding clearly shows that there was an onus on the 2nd respondent to show how many workers of the appellant were their members upon whom they clearly assert that the settlement was not binding u/s 18(1) of the Industrial Disputes Act, it cannot be assumed that the parties were not aware of the implications of Section 18(1) of the Industrial Disputes Act when the Court passed the order on December 19, 1974. This Court would not have sent the case back only, to decide the legal effect of Section 18(1) of the Industrial Disputes Act. Since a recognised and registered union had entered into a voluntary settlement this Court thought that if the same were found just and fair that could be allowed to be binding on all the workers even if a very small number of workers were not members of the majority union. It is only in that context that after hearing the parties the case was remanded to the Tribunal for a finding on the particular issues set out above."

14. In our view, the aforesaid judgment has no application. Firstly, in para 10 of the said judgment it is made clear that the matter was referred to the Conciliation Officer for the purpose of conciliation. Secondly, the ultimate ratio of the said judgment is that where settlement is just and fair, it should be extended to all the workmen. Para 27 of the said judgment reads as under :

It is not possible to scan the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objection portion is such that it completely out-weighs all other advantages gained the Court will be slow to hold a settlement as unfair and unjust. The settlement has to be accepted or rejected as a whole and we are unable to reject it as a whole as unfair or unjust. Even before this Court, the 3rd respondent representing admittedly the large majority of the workmen has stood by this settlement and that is a strong factor which it is difficult to ignore. As stated elsewhere in the judgment, we cannot also be oblivious of the fact that all workmen of the company have accepted the settlement. Besides, the period of settlement has since expired and we are informed that the employer and the 3rd respondent are negotiating another settlement with further improvements. These factors apart from what has been stated above, and the need for industry and harmony when the union backed by a large majority of workmen has accepted a settlement in the course of collective bargaining has impelled us not to interfere with this settlement."

15. In our view, the judgment of the Apex Court does not lay down a proposition of law that the workman who is not a party to the settlement which is entered into u/s 18(1) of the I.D. Act, can claim benefits thereunder notwithstanding that

the very same settlement is challenged by him by initiating proceedings under the MRTU and PULP Act, 1971.

16. Learned Counsel for the appellant thereafter relied upon another judgment of the Delhi High Court in the case of *Usha Spg. and Wvg. Mills Association v. Usha India and Ors.* reported in 7999 (1) CLR 559. From para 21 of the said judgment, it is clear that the said judgment is against the appellant. In paras 12 and 13 of the said judgment the Court has considered the effect of the provisions of Section 18(3) of the I. D. Act. We find that the view which we are taking is in consonance with the view which Delhi High Court has taken that the settlement u/s 18(1), cannot be enforced by the parties who are not parties to such settlement. Thereafter, reliance is placed on the judgment of the learned Single Judge of this Court in the case of *Sarva Shramik Sangh v. V.V.F. Ltd.* 2002 (1) CLR 797. In para 6 of the said judgment, the learned Single Judge of this Court has considered and followed judgment of the Apex Court in the case of *Herbertsons 's case* (supra). The learned Single Judge after considering the factors came to the conclusion that the settlement can be challenged by workmen who are not party to the settlement. In that event, if the settlement is just and fair this Court has power to bind other workers to such settlement. We are not at all disputing the said proposition of law. However, whether a union who is not a party to the settlement has a right to claim enforcement of the said agreement when the same is not acceptable to them and challenged in the pending proceedings. In the present case, it is not their case that they are accepting the said settlement. They have challenged the said settlement in the main complaint which is admittedly pending before the Industrial Court. Thereafter, learned Counsel for the appellant has pointed out another Judgment of the learned Single Judge in the case of *Gopinath Panchal v. HES Ltd.* 1996 (I) CLR 325 and contended that this judgment lays down a law that if a workman has not accepted settlement merely because he had not filed undertaking to accept the said settlement, he should not be deprived of such benefits. We find that the said judgment has no application to the facts of the present case for the simple reason that therein application arose u/s 33-C(2) of the Industrial Disputes Act and therein settlement was not a subject matter of challenge at all before the Industrial Court. Benefits of the settlement was denied merely on the ground that undertaking accepting the said settlement had not been filed. Thereafter the appellant relied upon another judgment of the Division Bench of this Court in the case of *Nagpur Dist. Central Co-operative Bank v. State of Maharashtra* 1987 Mah.L.J. 593. On the other hand, learned Counsel for the respondents relied upon judgment of the Division Bench of this Court in the case of *Tata Consulting Engineers And Association. Staff Union v. Tata Consulting Engineers*, 2002 CLR 701, in particular paragraph 8 thereof. Learned Counsel for the appellant also relied upon judgment of the Apex Court in the case of *National Engineering Industries Ltd. v. State of Rajastan* 2000(I) LLJ 263. In which it has been inter alia held as under :

Sub-sections (1) and (3) of Section 18 divide settlement into two categories i.e.

(1) those arrived at outside the conciliation proceedings and (2) those arrived at in the course of conciliation proceedings. A settlement which belonged to the first category has limited application in that it merely binds the parties to the agreement but the settlement belonging to the second category has extended application since it is binding on all the parties to the industrial disputes, to all others summoned to appear in the conciliation proceeding and to all persons employed in the establishment, as the case may be, to which the dispute related on the date of the dispute and to all others who joined the establishment thereafter. A settlement arrived in the course of conciliation proceedings with a recognised majority union will be binding on all workmen of the establishment, even those who belong to the minority union which had objected to the same. Recognised union having majority of members is expected to protect the legitimate interest of labour and enter into a settlement in the best interest of labour. This is with an object to uphold the sanctity of settlement reached with the active assistance of the Conciliation Officer and to discourage an individual employee or minority union from scuttling the settlement. When a settlement is arrived at during the conciliation proceedings it is binding on the members of the Workers Union as laid down by Section 18(3)(d) of the Industrial Disputes Act. It would also ipso facto bind all the existing workmen who are all parties to the Industrial dispute and who may not be members of Unions that are signatories to such settlement u/s 12(3) of the said Act. The industrial Disputes Act is based on the principle of collective bargaining for resolving industrial disputes and for maintaining industrial peace. The principle of industrial democracy is the bedrock of the Act as pointed out in the case of *P. Virudhachalam and Others Vs. Management of Lotus Mills and Another*, . In all these negotiations based on collective bargaining individual workmen necessarily recedes to the background. Settlement will encompass all the disputes existing at the time of settlement except those specifically let out."

17. The learned Counsel for the respondent-Company has also relied on judgment in the case of *Cooper Engineering Ltd., Bombay Vs. D.M. Aney and Others*, . In the case of *Tata Chemicals Ltd. Vs. The Workmen represented by Chemicals Kamdar Sangh*, the Supreme Court has observed as under :

13. A bare perusal of the above quoted section would show that whereas a Settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding is binding only on the parties to the agreement, a settlement arrived at in the course of conciliation proceedings under the Act is binding not only on the parties to the industrial dispute but also on the other persons specified in Clauses (b), (c) and (d) of Sub-section (3) of Section 18 of the Act. We are fortified in this conclusion by a decision of this Court in *Ramnagar Cane and Sugar Co. Ltd. Vs. Jatin Chakravorty and Others*, where it was held as follows (at p. 1015 of AIR):

When an industrial dispute is thus raised and is decided either by settlement or by an award the scope and effect of its operation is prescribed by Section 18 of

the Act. Section 18(1) provides that a settlement arrived at by agreement between the employer and the workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement, whereas Section 18(3) provides that a settlement arrived at in the course of conciliation proceedings which has become enforceable shall be binding on all the parties specified in Clauses (a), (b), (c) and (d) of sub-section (3) Section 18(3)(d) makes it clear that, where a party referred to in Clause (a) or (b) is composed of workmen, all persons who are employed in the establishment or part of the establishment, as the case may be, to which the disputes relates on the date of the dispute and all persons who subsequently become employed in that establishment or part, would be bound by the settlement..... In order to bind the workman it is not necessary to show that the said workman belong to the Union which was a party to the dispute before the conciliator. The whole policy of Section 18 appears to be to give an extended operation to the settlement arrived at in the course of conciliation proceedings. And that is the object with which four categories of persons bound by such settlement, are specified in Section 18, Sub-section (3)"

14. Similar view seems to have been held by another Division Bench of this Court in *The Jhagrakhan Collieries (P) Ltd. Vs. Shri G.C. Agrawal, Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur and Others, .*

15. The legal position emerging from the afore-mentioned provisions of the Act being clear, we now proceed to tackle the questions set out above.

16. As the first two questions are inseparably linked up, we propose to deal with them together. Although prima facie there seems to be considerable force in the Sangh's stand that if paras 2.3 3.1 and 3.3 of the aforesaid agreement of December 14, 1973 arrived at between the employees union and the appellant Company related only to the special pay and did not cover the Sangh's demand for variable Dearness Allowance linked to the Ahmedabad cost of living index, we do not consider it necessary to go into this question, as the said agreement not having been arrived at during the course of conciliation proceeding, it could not, according to Section 18(1) of the Act bind any one other than the parties thereto. A fortiori, the fact that the employees union which had been duly recognised under the Code of Discipline arrived at the aforesaid agreement with the appellant Company could not operate as a legal impediment in the way of the Sangh (which was not a party to the agreement) to raise a demand or dispute with regard to the Variable Dearness Allowance linked to Ahmedabad cost of living index or affect the validity of the reference by the Government or the jurisdiction of the Industrial Tribunal to go into the dispute. The conclusion that minority union can validly raise an industrial dispute gains support from Section 2(k) of the Act which does not restrict the ambit of the definition of "industrial dispute" to a dispute between an employer and recognised majority union but takes within its wide sweep may dispute or difference between employer and workmen including a minority union of workmen which is connected with

employment or terms of employment or conditions of labour of workmen as well as the observations made by this Court in Workmen of Dharampal Premchand (Saughandhi) Vs. Dharampal Premchand (Saughandhi), .

17. It may also be relevant to mention in this connection that both the Counsel for the Employees' Union and the Counsel for the appellant Company admitted before the Industrial Tribunal that the aforesaid agreement had been terminated by two months notice (See p.39 of the Industrial Tribunal's Award). We have, therefore, no hesitation in holding that neither the Sangh was precluded from raising the demand or the dispute, nor was the Government debarred from making the reference nor was the Industrial Tribunal's competence to go into the dispute and make the award affected in any manner. The first two questions are decided accordingly."

18. On the perusal of the aforesaid judgments, in our view, following position clearly emerges;

Firstly, if a settlement is u/s 18(1) of the Industrial Disputes Act and the same is not binding on the workers who are not party to the said settlement. Secondly, a person who does not accept the settlement is not entitled to benefits of the said settlement. For the purpose of deriving benefits of the said settlement it is necessary that the workman must accept the said settlement, particularly, it is not permissible in law that the workman can claim the benefits of the settlement while he refuses to comply with obligations thereunder. Thirdly, in case settlement is arrived at u/s 18(3) of the I.D. Act, in the course of conciliation proceeding, then settlement becomes binding on all the parties and all the workmen irrespective of the fact whether such workman has been accepted such settlement or not.

19. In view of the aforesaid position in law the appellants are not entitled to the benefits of the said settlement unless they accept the same and undertake to comply with the obligations therein.

20. In the circumstances, we are of the opinion that present appeal deserves to be dismissed and the same is dismissed. However, there shall be no order as to costs.